S.B.CRIMINAL MISC. PETITION NO.35/2007

Date : 26.07.2007

HON'BLE MR. SATYA PRAKASH PATHAK, J.

Mr. RRC Garasia for Mr. Abhishek Mirdha for the petitioner(s).
Mr. Ashok Upadyaya, Public Prosecutor for the State.
Mr. N.K. Choudhary for non-petitioner No.2.

By this criminal misc. petition under Section 482 Cr.P.C., the petitioners have prayed for quashing of the proceedings, pending in the Court of learned Additional Chief Judicial Magistrate No.2, Udaipur in Case No.04/2005 (State Vs. Manmohan Singh & Ors).

In nut-shell case of the petitioners is that petitioner No.1 Manmohan Singh and non-petitioner No.2 Parminder Kaur alias Pammi got married but on account of mis-understanding, the marriage did not succeed and ultimately divorce has taken place between the parties on 27.06.2007. The parties have reached to a compromise, not to continue any further litigation and wants to live peacefully in future separately, therefore, submitted a compromise before the learned trial court for the offence under Sections 498A and 406 IPC, but the learned trial court refused to

attest the compromise for the reason that the above said offences are not compoundable and rejected the application so moved vide order dated 02.12.2006 in Criminal Case No.4/2005.

The contention of learned counsel for the petitioners is that it is correct that the offences are not compoundable but under the inherent powers under Section 482 Cr.P.C for securing ends of justice this Court is fully empowered to quash the proceedings under Sections 498A and 406 IPC and Section 320 Cr.P.C. would not be a bar to the exercise of such powers when it becomes necessary in the interest of justice but at the same time it dependents on the facts and circumstances of each case. It is submitted further that the husband and wife are not living together and divorce has taken place between them, therefore, to keep such proceedings pending is of no consequence and to compel the parties to pursue the litigation. He has placed reliance on a decision rendered by the Hon'ble Supreme Court reported in 2003-04 Cr.L.R. (SC)(Suppl.) 526 (B.S. Joshi & Ors. Vs. State of Haryana & Anr.).

Learned counsel for non-petitioner has not disputed the factual aspect of the matter and confirmed the fact that the parties have entered into a compromise and do not want to continue with the litigation and divorce has taken place between the parties.

I have considered the submissions made before me. In the case of B.S.Joshi (supra) the High Court by the impugned judgment, dismissed the petition filed by the appellants seeking quashing of the FIR for the reason that offences u/s. 498-A & 406 IPC were non-compoundable and the inherent powers u/s.482 of the Code was not required to be invoked to bypass the mandatory provision of Section 320 of the Code. In support of its view, the High Court has referred to and relied upon the decisions of the Apex Court delivered in State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 Supp. (1) SCC 335; Madhu Limaye Vs. the State of Maharastra, (1977) 4 SCC 551 & Surrendra Nath Mohanty & Anr. Vs. State of Orissa, AIR 1999 SC 2181. The Apex Court in para No.14 and 15 held as under :

> 14.There is no doubt that the object of introducing Chapter XX-A containing Sec.498-A in the Indian Penal Code was to prevent the torture to a woman by her

> husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper technical view would be counter-productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of Indian Penal Code.
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> 15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Sec.320 of the Code does not limit or affect the powers u/s.482 of the Code.

In the present case also facts and circumstances of the case demands that pending criminal proceedings under Sections 498A and 406 IPC before the learned trial court between the parties must come to an end. In the above circumstances, in the interest of justice, I deem it proper while exercising inherent powers under Section 482 Cr.P.C. to quash the criminal proceedings under Sections 498A and 406 IPC pending in the Court of learned Additional Chief Judicial Magistrate No.2, Udaipur in Criminal Case No.4/2005 (State of Raj. Vs. Manmohan Singh & Ors.).

Consequently, the criminal misc. petition is allowed and the aforesaid criminal proceedings pending in the Court of learned Additional Chief Judicial Magistrate No.2, Udaipur in Criminal Case No.4/2005 (State of Raj. Vs. Manmohan Singh & Ors.) are hereby quashed and set aside.

(SATYA PRAKASH PATHAK), J.